

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAID GSSIME,

Plaintiff,

v.

MR. JOHN BURGE, et al.,

Defendants.

DECISION & ORDER

08-CV-6404CJS

Plaintiff has filed a *pro se* complaint pursuant to 42 U.S.C. § 1983, alleging that defendants violated his constitutional rights by denying him medical and dental care. (Docket # 1). Currently before this Court is plaintiff's motion for a physical exam pursuant to Federal Rule of Civil Procedure 35. (Docket # 30). Specifically, plaintiff contends that defendants must pay for the examination to ascertain the "exact nature" of his injuries and damages. (*Id.*; Docket # 35). Defendants respond that they do not oppose such a request if plaintiff pays for the examination. (Docket # 34).

Rule 35(a) provides that the court may, for good cause shown, order a party whose mental or physical condition is in controversy to "submit to a physical or mental examination by a suitably licensed or certified examiner." Fed. R. Civ. P. 35(a). Whether to order an examination under Rule 35(a) is within the court's discretion. *Muhammed v. Wright*, 2010 WL 1981648, *1 (W.D.N.Y. 2010); *Mohamed v. Marriott Int'l, Inc.*, 1996 WL 103838, *3 (S.D.N.Y. 1996). The moving party is responsible for bearing the cost of the examination. *Benitez v. Choinski*, 2006 WL 276975, *2 (D.Conn. 2006) (citing *Eckmyre v. Lambert*, 1988 WL 573585, *1 (D.Kan. 1988)).

Through his motion, plaintiff seeks a medical examination in order to ascertain the scope of his alleged injuries and damages; however, plaintiff has not indicated that he has sufficient funds to pay for the examination. Rather, plaintiff contends that defendants must bear that cost. Defendants need not, however, to finance discovery costs for indigent adversaries. *Benitez v. Choinski*, 2006 WL 276975 at *2 (citing cases). Neither is the court authorized under 28 U.S.C. § 1915 to finance plaintiff's discovery requests even though plaintiff is proceeding in this action *in forma pauperis*. *Id.* (citing cases); 28 U.S.C. § 1915. Accordingly, plaintiff's motion for a Rule 35(a) physical examination is denied.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
January 9, 2012